

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ENRIQUE PEDRAZA,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	NO. 05-1841
	:	
v.	:	
	:	
FRANKLIN J. TENNIS, et al.,	:	
	:	
Respondents.	:	

MEMORANDUM AND ORDER

BUCKWALTER, S.J.

October 5, 2005

Petitioner has filed objections to Magistrate Judge Thomas J. Rueter's Report and Recommendation, but there is no merit to them. Petitioner has clearly not exhausted his state remedies. As Magistrate Judge Rueter points out:

Because a dismissal of the petition will not jeopardize the timeliness of a subsequent petition under 28 U.S.C. § 2244(d), the court should dismiss the petition rather than stay the petition pending the final resolution of the state appellate proceedings. See Rhines v. Weber, 125 S.Ct. 1528, 1535 (2005); Crews v. Horn, 360 F.3d 146, 153 (3d Cir. 2004).

An order follows.

AND NOW, this 5th day of October, 2005, upon careful and independent consideration of the pleadings and record herein, and after review of the Report and Recommendation of Thomas J. Rueter, United States Magistrate Judge, and Petitioner's objections thereto, it is hereby **ORDERED**:

1. The Report and Recommendation is APPROVED and ADOPTED;

2. The Petition for Writ of Habeas Corpus is DISMISSED, without prejudice, for failure to exhaust state court remedies; and
3. No certificate of appealability is granted.
4. The Clerk of Court shall mark this matter as CLOSED for statistical purposes.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.